

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,  
Plaintiff/Respondent,  
vs.  
ELMER RED EAGLE, JR.,  
Defendant/Movant.

Cause No. CR 01-93-GF-BMM  
CV 16-86-GF-BMM

ORDER DISMISSING MOTION AND  
DENYING CERTIFICATE OF  
APPEALABILITY

This case comes before the Court on Defendant Red Eagle's motion for a certificate of appealability. Red Eagle is a federal prisoner proceeding pro se.

Red Eagle's conviction in this case was vacated because the evidence was not sufficient to support his conviction. *See United States v. Red Eagle*, No. 02-30187 (9th Cir. Mar. 13, 2003). Consequently, there is nothing to vacate, set aside, or correct. Red Eagle's motion for a certificate of appealability must be dismissed.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Red Eagle's motion for certificate of appealability (Doc. 79) is DISMISSED for lack of jurisdiction.
2. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Red Eagle files a notice of appeal.
3. The clerk shall ensure that all pending motions in this case and in CV 16-

86-GF-BMM are terminated and shall close the civil file by entering a judgment of dismissal.

4. The clerk shall alter the docket of the case to reflect that the sentence and judgment were vacated and Red Eagle was acquitted.

DATED this 27<sup>th</sup> day of July, 2016.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on top and "Morris" on the bottom, both starting with a capital letter.

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Brian Morris  
United States District Court Judge